

**Inbound International calls:** The parties will charge each other the relevant international transit rate as included in the parties' agreement which has been approved by the Regulator. If the agreement is terminated and is not replaced by a similar agreement, approved by the Regulator, the Regulator shall determine the rates to apply to all incoming international calls transiting their network and destined for the mobile customers of the mobile network of the other party.

**Outbound International Traffic:** The Parties will charge each other a rate not to exceed that charged to its own customers for traffic to similar destinations and any applicable volume discounts.<sup>49</sup>

ASLI therefore believes that its showing regarding Independent Samoa's interconnection regime satisfies the requirements of Section 63.18(k)(3)(iii) of the Commission's rules.<sup>50</sup>

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<sup>49</sup> The *tala* is the Independent Samoa currency. One *tala* is divided into 100 *sene* and is currently worth approximately US\$0.42. These interconnection rates superseded a series of orders establishing interim interconnection rates and dating back to 2006. See Replacement Interconnection Charges Applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/03, *available at* [www.regulator.gov.ws/Portals/112/Order2009%2003.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2003.pdf); Replacement Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/02, *available at* [www.regulator.gov.ws/Portals/112/Order2009%2002.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2002.pdf); Interim Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/01, *available at* [www.regulator.gov.ws/Portals/112/Order%202009%2001.pdf](http://www.regulator.gov.ws/Portals/112/Order%202009%2001.pdf); Interim Interconnection Charges, Order No. 2008/03, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf); Fixed and Mobile Network Interconnection Terminating Rates, Order No. 2007/4, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf); Interim Interconnection Rates for Fixed and GSM Systems, Order No. 2006/4, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-4,%20Interconnect%20Rate%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-4,%20Interconnect%20Rate%20Order.pdf).

<sup>50</sup> See 47 C.F.R. § 63.11(k)(3)(iii).

**E. Independent Samoa's Telecommunications Regulatory Framework Establishes Competitive Safeguards to Protect Against Anticompetitive Practices**

Independent Samoa's telecommunications regulatory framework establishes competitive safeguards to protect against anticompetitive practices. These safeguards include prohibition on and remedies for the anticompetitive practices specifically enumerated in Section 63.18(k)(3)(iv) of the Commission's rules, as well as a host of other safeguards.<sup>51</sup>

*First*, Independent Samoa's telecommunications regulatory framework establishes cost-allocation rules in the foreign country to prevent cross-subsidization. The Telecommunications Act specifically defines as an abuse of dominant market power:

[U]sing revenues or the allocation of costs from one telecommunications service to cross-subsidize a competitive telecommunications service with the objective of lessening competition, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services.<sup>52</sup>

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary. ASLI's showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(A) of the Commission's rules.<sup>53</sup>

*Second*, Independent Samoa's telecommunications regulatory framework establishes timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities. The Telecommunications Act specifically defines as an abuse of dominant market power:

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<sup>51</sup> 47 C.F.R. § 63.11(k)(3)(iv).

<sup>52</sup> Telecommunications Act § 27(h)(iv).

<sup>53</sup> See 47 C.F.R. § 63.11(k)(3)(iv)(A).

[the] failing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant formation which is required by such other service providers to provide telecommunications services and which is not available from other sources” where such action has “the effect of impeding or preventing a competitor’s entry into, or expansion in, a market.”<sup>54</sup>

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary. ASLI’s showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(B) of the Commission’s rules.<sup>55</sup>

*Third*, Independent Samoa’s telecommunications regulatory framework protects carrier and customer proprietary information. “Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.”<sup>56</sup> The Telecommunications Act also requires that “[t]he purposes for which customer information is collected by a service provider shall be identified at or before collection, and a service provider shall not, subject to this section, collect, use, maintain or disclose customer information for undisclosed purposes.”<sup>57</sup> Service providers must ensure the accuracy and completeness of customer information, and ensure that both customer information and communications “are protected by security safeguards that are appropriate to the sensitivity

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<sup>54</sup> Telecommunications Act § 27(h)(iv). *See also id.* § 13(6) (providing that “[l]icences for service providers that provide the same telecommunications services or own or operate the same telecommunications networks shall not unfairly discriminate between such licensees.”).

<sup>55</sup> *See* 47 C.F.R. § 63.11(k)(3)(iv)(B).

<sup>56</sup> Telecommunications Act § 50(2).

<sup>57</sup> Telecommunications Act § 50(3).

of such information and communications.”<sup>58</sup> ASLI’s showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(C) of the Commission’s rules.<sup>59</sup>

Independent Samoa’s regulatory framework includes numerous other safeguards to guard against anticompetitive conduct. The Telecommunications Act specifically prohibits arrangements between two or more service providers that:

- “directly or indirectly fix the prices or other terms or conditions of telecommunications services in telecommunications markets;”
- “directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market;” or
- “apportion, share or allocate telecommunications markets among themselves or other service providers.”<sup>60</sup>

As noted in part II.A above, the Telecommunications Act also prohibits a dominant service provider from abusing its dominant market position.<sup>61</sup> Such abuses are defined to include (in addition to those discussed above) the following:

- “[B]undling of telecommunications services, whereby the service provider requires, as a condition of supplying a service to a competitor, that the competitor does not require;”
- “[O]ffering a competitor more favourable terms or conditions that are not justified by cost differences if the competitor acquired another service that the competitor does not require;”
- “[P]re-emptively acquiring or securing scarce facilities or resources, including but not limited to rights of way, required by another service provider for the operation of such service provider’s business, with the effect of denying the use of the facilities or resources to such service provider;”
- “[S]upplying competitive telecommunications services at prices below long run average incremental costs or such other cost standard as may be established by the Regulator;”

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<sup>58</sup> Telecommunications Act § 50(4), (5).

<sup>59</sup> 47 C.F.R. § 63.11(k)(3)(iv)(C).

<sup>60</sup> See Telecommunications Act § 28.

<sup>61</sup> See Telecommunications Act § 27.

- “[P]erforming any of the following actions, where such actions have the effect of impeding or preventing a competitor’s entry into, or expansion in, a market:”
- “[D]eliberately reducing the margin of profit available to a competitor that requires wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services required by that competitor, or decreasing the prices of the retail telecommunications services in markets where they compete, or both;”
- “[R]equiring or inducing a supplier to refrain from selling to a competitor;”
- “[A]dopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of a competitor;”
- “[F]ailing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant [in]formation which is required by such other service providers to provide telecommunications services and which is not available from other sources;”
- “[U]sing information obtained from competitors for purposes related to interconnection of supply of telecommunications services by the dominant service provider to compete with such competitors;” and
- “[A]ny other action or activity engaged in by a dominant service provider that the Regulator determines in accordance with section 29 [of the Telecommunications Act] to have the effect, or likely to have the effect, of materially restricting or distorting competition in a telecommunications market.”<sup>62</sup>

ASLI therefore believes that its showing regarding Independent Samoa’s competitive safeguards satisfies the requirements of Section 63.18(k)(3)(iv) of the Commission’s rules.<sup>63</sup>

**F. Independent Samoa Has an Effective Regulatory Framework for Developing, Implementing, and Enforcing Legal Requirements, Interconnection Arrangements, and Other Safeguards**

Independent Samoa has an effective regulatory framework for developing, implementing, and enforcing legal requirements, interconnection arrangements, and other safeguards. As discussed in parts II.A-D above, the Telecommunications Act itself establishes detailed legal

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<sup>62</sup> See *id.*

<sup>63</sup> See 47 C.F.R. § 63.11(k)(3)(iv).

requirements for the Independent Samoa telecommunications sector. It tasks the Regulator with enforcing these requirements and safeguards and arms the Regulator with a variety of enforcement remedies.

Independent Samoa's regulatory framework is no mere formality. To the contrary, the Regulator has used the full range of its powers under the Telecommunications Act to advance its pro-competitive, consumer protection, and market development mandates. The Regulator has issued findings of market dominance in particular sectors.<sup>64</sup> It has considered and resolved interconnection disputes between licensed carriers<sup>65</sup> and ordered interconnection and imposed

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<sup>64</sup> See, e.g., Digicel Dominance Order, No. 2006/6 (finding Digicel Samoa dominant in the cellular radio market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-6,%20Digicel%20Dominance%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-6,%20Digicel%20Dominance%20Order.pdf); SamoaTel Dominance Order for International ISP Connectivity, No. 2006/5 (finding SamoaTel dominant in the international Internet access services market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-5,%20Samoa%20Tel%20IP%20Dominance%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-5,%20Samoa%20Tel%20IP%20Dominance%20Order.pdf); Telecom Samoa Cellular Dominance Order for Cellular Radio Systems, No. 2006/2 (finding TSCL dominant in the cellular mobile market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-2,%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28TSCL%29.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-2,%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28TSCL%29.pdf); SamoaTel Dominance Order for fixed line telephony and interconnection No. 2006/1 (finding SamoaTel dominant in the fixed-line public telephony and interconnection to fixed-line networks markets), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-1,%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28SamoaTel%29.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-1,%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28SamoaTel%29.pdf).

<sup>65</sup> See, e.g., Refusal by SamoaTel to Interconnect with Digicel's DigiFixed Service, Order No. 2010/02 (ordering SamoaTel to interconnect with Digicel's DigiFixed service and ordering Digicel to refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01), *available at* [www.regulator.gov.ws/Portals/112/Order%202010.01%20-%20Cost%20Based%20Rates.pdf](http://www.regulator.gov.ws/Portals/112/Order%202010.01%20-%20Cost%20Based%20Rates.pdf); Refusal by SamoaTel to Interconnect with Digicel's Fixed Wireless Service, Order No. 2009/04 (ordering SamoaTel to interconnect with Digicel's fixed wireless service), *available at*

interconnection rates between the dominant service providers SamoaTel and Digicel Samoa.<sup>66</sup> It has set retail rates for dominant service providers.<sup>67</sup> It has also resolved complaints by one service provider against another.<sup>68</sup> ASLI therefore believes that its showing regarding Independent Samoa's development, implementation, and enforcement of its telecommunications regulatory framework satisfies the requirements of Section 63.18(k)(3)(v) of the Commission's rules.<sup>69</sup>

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[www.regulator.gov.ws/Portals/112/Order2009%2004%20-SamoaTel%20to%20interconnect%20with%20Digifixed.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2004%20-SamoaTel%20to%20interconnect%20with%20Digifixed.pdf).

<sup>66</sup> See part II.D above.

<sup>67</sup> See, e.g., Approval of Changes to Retail Pricing Structure for SamoaTel Limited, Order No. 2008/02, available at [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-02.%20Approval%20of%20Changes%20to%20Retail%20Pricing%20Structure%20for%20SamoaTel%20Limited.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-02.%20Approval%20of%20Changes%20to%20Retail%20Pricing%20Structure%20for%20SamoaTel%20Limited.pdf); Order for New SamoaTel Fixed to Mobile Rates, Order No. 2008/1, available at [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-1.%20SamoaTel%20mobile%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-1.%20SamoaTel%20mobile%20rate%20order.pdf).

<sup>68</sup> See, e.g., SamoaTel Limited's Complaint against Digicel (Samoa) Limited's LCR/Sim Box Units, Order No. 2010/03 (ordering Digicel to reprogram all least-cost router ("LCR") units, refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01, provide the Regulator with evidence of regulatory approval for retail rates charged for LCR services, and submit to the Regulator copies of contracts between Digicel Samoa Limited and its LCR customers), available at [www.regulator.gov.ws/Portals/112/Use\\_Order2010.03.pdf](http://www.regulator.gov.ws/Portals/112/Use_Order2010.03.pdf).

<sup>69</sup> See 47 C.F.R. § 63.11(k)(3)(v).

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### CONCLUSION

ASLI hereby requests expedient approval of this foreign-carrier affiliation notification in order to allow timely closing on ASLI's acquisition of SamoaTel.

AMERICAN SAMOA LICENSE, INC.

  
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15 March 2011



### **CERTIFICATION**

I certify that I am an officer of American Samoa License, Inc.; that I have examined the foregoing notification and that to the best of my knowledge, information and belief, all statements of fact contained in this notification are true.

Executed on March 15, 2011

A handwritten signature in black ink, appearing to be 'Adolfo', written over a horizontal line.

Adolfo Montenegro  
President  
AMERICAN SAMOA LICENSE, INC.

## **LIST OF EXHIBITS**

- Exhibit 1: Telecommunications Act (No. 20) 2005, as amended**
- Exhibit 2: Foreign Investment Act (No. 3) 2000, as amended**
- Exhibit 3: Rules for the Licensing of Telecommunications Services and the Ownership or Operation of Telecommunications Networks in Samoa**
- Exhibit 4: Guidelines: Application for a Foreign Investment Certificate in Samoa**